IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE NE/corner York Road and * DEPUTY ZONING COMMISSIONER Old Padonia Road (9712 York Road) * OF BALTIMORE COUNTY 8th Election District 3rd Councilmanic District * Case No. 88-485-X Estate of Angela G. O'Connor Petitioner * * * * * * * * * * FINDINGS OF FACT AND CONCLUSIONS OF LAW The Petitioner herein requests a special exception for a service garage use in the two existing buildings on the subject property, as more particularly described in Petitioner's Exhibit 1. The Petitioner, by James D. O'Connor, Esquire, personal representative for Angela G. O'Connor, appeared and testified. Also appearing on behalf of the Petition were Ray and Connie Brehm, Contract Purchasers of the subject property. There were no Protestants. Testimony indicated that the subject property, known as 9712 York Road, was granted a special exception for use as a gasoline service station in 1955, Case No. 3504-5. Testimony indicated that Mr. Brehm has leased the subject property from the Petitioner, Angela G. O'Connor, since 1983. Mr. Brehm testified that he proposes to discontinue the sale of gasoline and use the property exclusively as a service garage. Mr. Brehm addressed the factors considered in granting a special exception, as delineated in Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), and testified that all requirements of said Section are satis-Mr. Brehm further testified that there will be a tremendous decrease in traffic flow as currently, anywhere from 200 to 300 cars visit the station on a daily basis. Mr. Brehm testified that he estimates an average of 30 vehicles a day will frequent the premises once the business Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 Estate of Angels G. O'Connor c/a James D. d'Connor, Personal Representative 222 Bools/ Avenue, Suite C-3 Tourion, Maryland 21204 Dennis F. Rasmusser Potition for Special Exception CASE NUMBER: 88-485-X NE/C York Road and Gld Pedonia Road (9M2 York Hote) 8th Election District - Grd Councilmenic Petitioner(e): Estate of Angele G. O'Corror HEARTHG SCHEDLEDS FRIDAY, JUNE 10, 1983 at Erod a.m. Dear St. S'Cornors Please be advised that \$19.87 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself. THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin. fail to make the cion and post set(s), there for each set not BALTIMORE CJUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION MISCELLANEOUS CASH RECEIPT 83/0/2 _ACCOUNT_K-01-615-000 urs,

B B D13 - - - - 75 57 1 8 8 - 185 -

VALIDATION OR SIGNATURE OF CASHIER

is converted. He further testified that in his opinion, the removal of the fuel tanks and the changeover to a service garage will be an improvement, to the surrounding environment. Mr. Brehm testified that there will be no damaged or disabled vehicles stored on the premises. The Petitioner seeks relief from Section 230.13, pursuant to

Section 502.1 of the B.C.Z.R. It is clear that the B.C.Z.R. permits the use proposed in a B.L.-C.C.C. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Sec-

tion 502.1 are satisfied.

I. ROBERT HAINES

\$ 31.12

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

> 88-485-X CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towers, Maryland

District 8 Th	bestale Elastine
Posted for:	pecial Exciption ate of Angela G.O'Conner Elc York Road and Old Padonia Road. Rd.)
Petitioner: £27.	ate of angela 9.0' Conner
Location of property: N_{\star}	E/c Unk Road and Old Padonia Road
19712 York	Res Comment of the Co
Location of Signs: N. It	Corner of Old Padenia and York Road

Remarks:	
Posted by	rate Date of return: 17104. 47 108
	"DUPLICATE"
NOTICE OF HEARING	CERTIFICATE OF PUBLICATION
The Zuning Commissioner of Bal- more County, by authority of the oning Act and Regulations of Balti- nore County will hold a public earing on the property identified erein in Room 106 of the County Office Building, located at 111 W.	TOWSON, MD., May 19 19 88 THIS IS TO CERTIFY, that the annexed advertisement was
Aryland as follows: Pelition for Special Exception Case number: 88-485-A NEIC York Road and Old Padona Road (9712 York Road) 8th Election District 3rd Councilmanic District Pelitioner(s): Estate of Angela G. O'Connor Hearing Date: Friday, June 10, 1988 at 9:00 a.m.	published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on 19.88
Special Exception: Service garage use in the two buildings upon the premiare pursuant to BCZR 230.13. In the event that this Petition is granted, a building permit may be issued within the thirty (30) day applicable of the property of the	THE JEFFERSONIAN.
peal period. The Zunung Commis- sioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hear-	5. Zefe Olm Publisher

LANDMARK COMMUNITY NEWSPAPE Westminster, Mo THIS IS TO CERTIFY that the ann was published forcne..(1)......s to thelCth......day ofNay...... Carroll County Times, Randallstown News, a Community Times, a LANDMARK COMMUNITY NEWSPA

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this Mtd day of June, 1988 that the Petition for Special Exception for a service garage use in the two existing buildings on the subject property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions:

1) The Petitioner may apply for his permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2) The Petitioner shall comply with all requirements of the Baltimore County Landscaping Manual.

If the Petitioner should desire to store any damaged or disabled vehicles on the premises, compliance with Section 405A of the B.C.Z.R. will be required. At that time, the Petitioner, the Owner, and/or the Occupant of the premises shall submit to the Office of Zoning for approval a revised site plan evidencing compliance with Section 405A.

AMN:bjs

1 Martinous ANN M. NASTAROWICZ Deputy Zoning Commissioner for Baltimore County

*336

AZIMUTH CONSULTANTS

ZONING DESCRIPTION 9712 York Road

Beginning on the West side of York Road, 80 feet wide, at a distance of 185 feet North of the centerline of Old Padonia Road, thence running 1) By a curve to the right having a radius of 53,397.90 feet, an arc length of 78.23 feet and a chord bearing South 18 degrees 18 minutes 53 seconds East, 78.23 feet,

2) By a curve to the right having a radius of 541.00 feet, an arc length of 48.28 feet and a chord bearing South 15 degrees 48 minutes Ol seconds East, 48.26 feet,

3) By a curve to the right having a radius of 25.00 feet, an arc length of 47.53 feet and a chord bearing South 41 degrees 12 minutes 58 seconds West, 40.69

4) North 84 degrees 19 minutes 16 seconds West, 65.69 feet 5) South 05 degrees 32 minutes 09 seconds West, 10.00 feet

6) North 84 degrees 19 minutes 16 seconds West, 124.19 feet 7) North 09 degrees 49 minutes 44 seconds West, 78.34 feet and

8) North 71 degrees 15 minutes 13 seconds East, 203.15 feet to the point of beginning. Containing 0.568 acres of land, more or less.

Also known as 9712 York Road in the 8th Election District.

MISCELLANEOUS CASH	RECEIPT			
DATE 3/11/92	ACCOUNT	01 - A15		- ·
	AMOUNT_\$_	100 1	· · · · · · · · · · · · · · · · · · ·	-
RECEIVED TEAM: BSA	32 A 12521	· 11		_
POR FILLS FL			* 354	- •

Baltimore County Zoning Commissione Office of Planning & Zoning Towson, Maryland 21204 494-3353

J. Robert Haines

June 14, 1988

336

Towson, Maryland 21204 RE: PETITION FOR SPECIAL EXCEPTION NE/corner York Road and Old Padonia Road (9712 York Road)

James D. O'Connor, Esquire

222 Bosley Avenue, Suite C-3

8th Election District; 3rd Councilmanic District Estate of Angela G. O'Connor - Petitioner Case No. 88-485-X

Dear Mr. O'Connor:

Enclosed please find the decision rendered on the above-referenced case. The Petition for Special Exception has been granted subject to the restrictions noted in the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3391.

Very truly yours,

a MAKeterening ANN M. NASTAROWICZ Deputy Zoning Commissioner for Baltimore County

Enclosure cc: Mr. & Mrs. Ray Brehm 9712 York Road, Cockeysville, Md. 21030

People's Counsel File

PETITION FOR SPECIAL EXCELLION	" , —
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the	
Special Exception under the Zoning Law and Zoning Regulations of Battimore	
herein described property for _ Service garage use in the two buildings upon the	
proplems pursuant to BCZR 230.13	MAI

ises pursuant to BCZR 230.13	MAP .	Vi
***************************************		4
	8. D.	8
Property is to be posted and advertised as prescribed by Zoning Regulations.	DATE	10
at a transfer of the property	300	_
, or we, agree to pay expenses of above Special Exception advertising, posting, is petition, and further agree to and are to be bound by the zoning regulations and restrictions is petition, and further agree to and are to be bound by the zoning regulations and restrictions is petition, and further agree to and are to be bound by the zoning County.	1000	ئــ
illimore County suppose personal afficient	DP	

I/We do solemnly declare and affirm, under the penalties of perjury, that I we are the legal owner(s) of the property N-58,070 which is the subject of this Petition. W. 5,050 Legal Owner(s):

Contract Purchaser:	TWENT Owner (s):
Ray & Connie Brehm (Type or Print Name)	Estate of Angela G. Q'Connor
Signature	Signature James D. O'Connor, Personal Representative
9712 York Road	(Type or Print Name)
Cockeysville, MD 21030 City and State	Signature
666-3230 Attorney for Petitioner:	222 Bosley Avenue, Suite C-3

	Address	Phone No.
Type or Print Name)	Towson, Maryland 21204.	321-0595
Signature	City and State	
Address	Name, address and phone number tract purchaser or representative	of legal owner, con- to be contacted

SAME AS ABOVE CONTRACT PURSHAGER Attorney's Telephone No.: _____ ORDERED By The Zoning Commissioner of Baltimore County, this 30th day

of MARCH, 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 10th day of JONE, 19.88 at 9. o'clock

J. Robert Milione Zoning Commissioner of Baltimore County.

2 C O.-No. 1

Moderated and a second and country REVIEWED BY: CYR

Office of Planning & Zoning Towson, Maryland 21204 J. Robert Haines
Zoning Commissioner

NOTICE OF HEARING



The Zoning Commissioner of Caltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Fetition for Special Exception CASE NUMBER: 69-465-X NE/C York Road and Uld Padonia Road (17712 York Road) 8th Election District - 3rd Councilsanie Petitioner(s): Estate of Angels G. O'Cornor HEARING SCIENLED: FRIDAY, JUNE 10, 1938 at 8:00 a.m.

Special Exceptions Service garage use in the two buildings upon the premises pursuent to ECZR 230.13.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

BALLMORE COUNTY, MARYLIND

INTER-OFFICE CORRESPONDENCE

TO J. Robert Haines Date____May 20, 1988

FROM P. David Fields, Director
Office of Planning and Zoning SUBJECT Zoning Petition #88-485-X

This office is not opposed to the granting of this

cc: Shirley Hess, People's Counsel J. G. Hoswell Zoning File

88-485-X

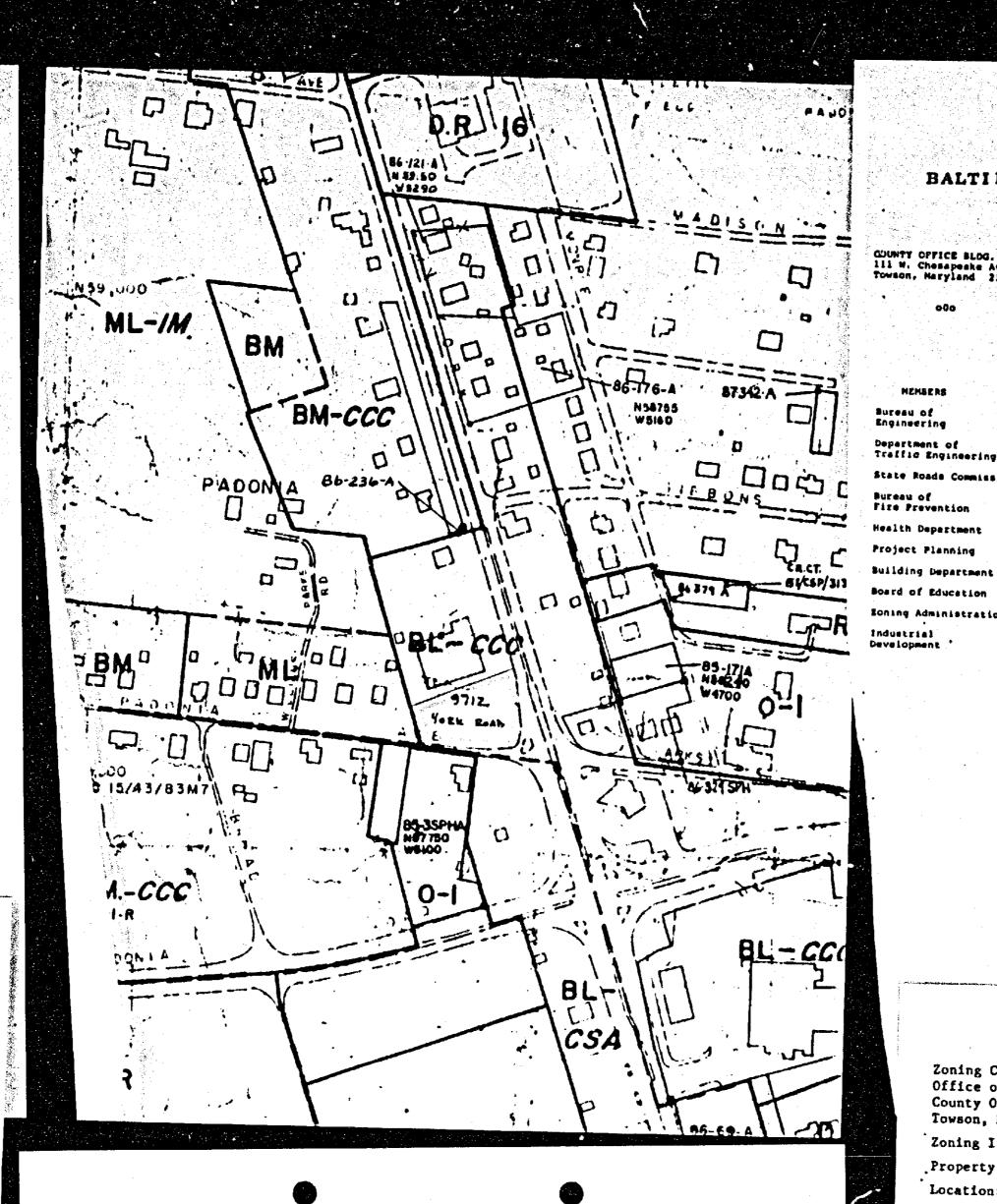
BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building Towson, Maryland 21204

Your petition has been received and accepted for filing this day of March , 1988

ZONING COMMISSIONER

Petitioner Ray Brehm, et ux Petitioner's Chairman, Zoning Plans Received by: Attorney Advisory Committee



Baltimore County Fire Department Towson, Maryland 21204-2586 494-4500

Paul H. Reincke

J. Robert Haines Zonina Cammissioner Office of Planning and Zoning Baltimore County Office Building Towson, MD 21204



Re: Property Owner: Estate of Angela G. O'Connor, Contract Dennis F. Rusmussen Purchaser Raymond E. Brehn, et ux

April 5, 1988

NE/C York Rd., Old Padonia Road

Item No.: 336 Gentlemen:

Zoning Agenda: Meeting of 3/29/88

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" a poplicable and required to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

($_{\rm X}$) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

() 6. Site plans are approved, as drawn.

() 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: At 1 4-5-88 Noted and Approved:

Fre Prevention Bureau

Special Inspection Division

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE May 17, 1988

111 W. Chesapeake Ave. Towson, Maryland 2120/ Mr. & Mrs. Ray Brehm

9712 York Road Cockeysville, Maryland 21030

> RE: Item No. 336 - Case No. 88-485-X Petitioner: Ray Brehm, et ux Petition for Special Exception

Dear Mr & Mrs. Brehm:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Spriece When lit JAMES E. DYER Chairman Zoning Plans Advisory Committee

Enclosures

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROT TION AND RESOURCE MANAGEMENT

Zoning Commissioner Office of Planning and Zoning County Office Building Towson, Maryland 21204

Zoning Item 1336, Zoning Advisory Committee Meeting of March 29, 1988

Property Owner: Estate of Angela G. O'Conner

Location: NE/C York Rd. and Old Padenia Rd. District 8

Water Supply metro Sewage Disposal metro COMMENTS ARE AS FOLLOWS:

() Frior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for final review

() Prior to new installation/s of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 494-3775, to obtain requirements for such installation/s before work begins. () A permit to construct from the Bureau of Air Quality Management is required for such items as spray paint processes, underground gusoline storage tank/s (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere. () A permit to construct from the Bureau of Air Quality Management is required for any charbroiler operation which has a total cooking surface area of five (5) square feet or more.

() Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Hental Hygiene for review and approval. () Prior to any new construction or substantial alteration of public swimming pool, wading pool,

bathhouse, saunas, whirlpools, her tube, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information, contact the Recreational Hygiene Section, Bureau of Regional Community Services, 494-3811.

() Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health. If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.

) Prior to razing of existing structure/s, petitioner must contact the Division of Waste Management at 494-3768, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Hansgement regarding removal of asbestos, 494-3775. Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Frior to removal or abandonment, owner must contact the Division of Waste Management at 494-3768.

() Soil percolation tests, have been ____, must be ____, conducted.
() The results are valid until
() Soil percolation test results have expired. Patitioner should contact the Division of Water and Sewer to determine whether additional tests are required. () Where water wells are to be used as a source of water supply, a well meeting the minisum Baltimore County Standards must be drilled.

) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test () shall be valid until
() is not acceptable and must be retested. This must be accomplished prior to conveyance

of property and approval of Building Permit Applications. () Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.) If submission of plans to the County Review Group is required, a Hydrogeological Study and an

Environmental Effects Report must be submitted. directed to sanitary sewer via oil separator.

Karen Th. Merry BUREAU OF WATER QUALITY AND RESOURCE MANAGEMENT



Richard H. Trainor Hal Kassoff

March 31, 1988

Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, Maryland 21204

RE: Baltimore County Padonia Auto Center Angela O'Connor N/E/corner York Road Maryland Route 45 and Old Padonia Road Item #336

Dear Mr. Haines:

Att: James Dyer

After reviewing the submittal for a special exception for a service garage use in the two buildings upon the premises, the State Highway Administration-Bureau of Engineering Access Permits finds the plan generally aceptable.

If you have any questions, contact Larry Brocato of this office (333-1350).

Very truly yours,

Creston J. Mills, Jr. Acting Chief-Bureau of Engineering Access Permits

LB/es

cc: J. Ogle Azimuth Consultants



ZONING OFFICE

My telephone number is (301) 333-1350

Teletypewriter for impaired Hearing or Speech
383-7555 Bastimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toil Free 707 North Calvert St., Baltimore, Maryland 21203-0717

Baltimore County Department of Public Works Bureau of Traffic Engineering Courts Building, Suite 405 Towson, Maryland 21204 494-3554

May 6, 1988



Mr. J. Robert Haines Zoning Commissioner County Office Building Towson, maryland 21204

Dear Mr. Haines:

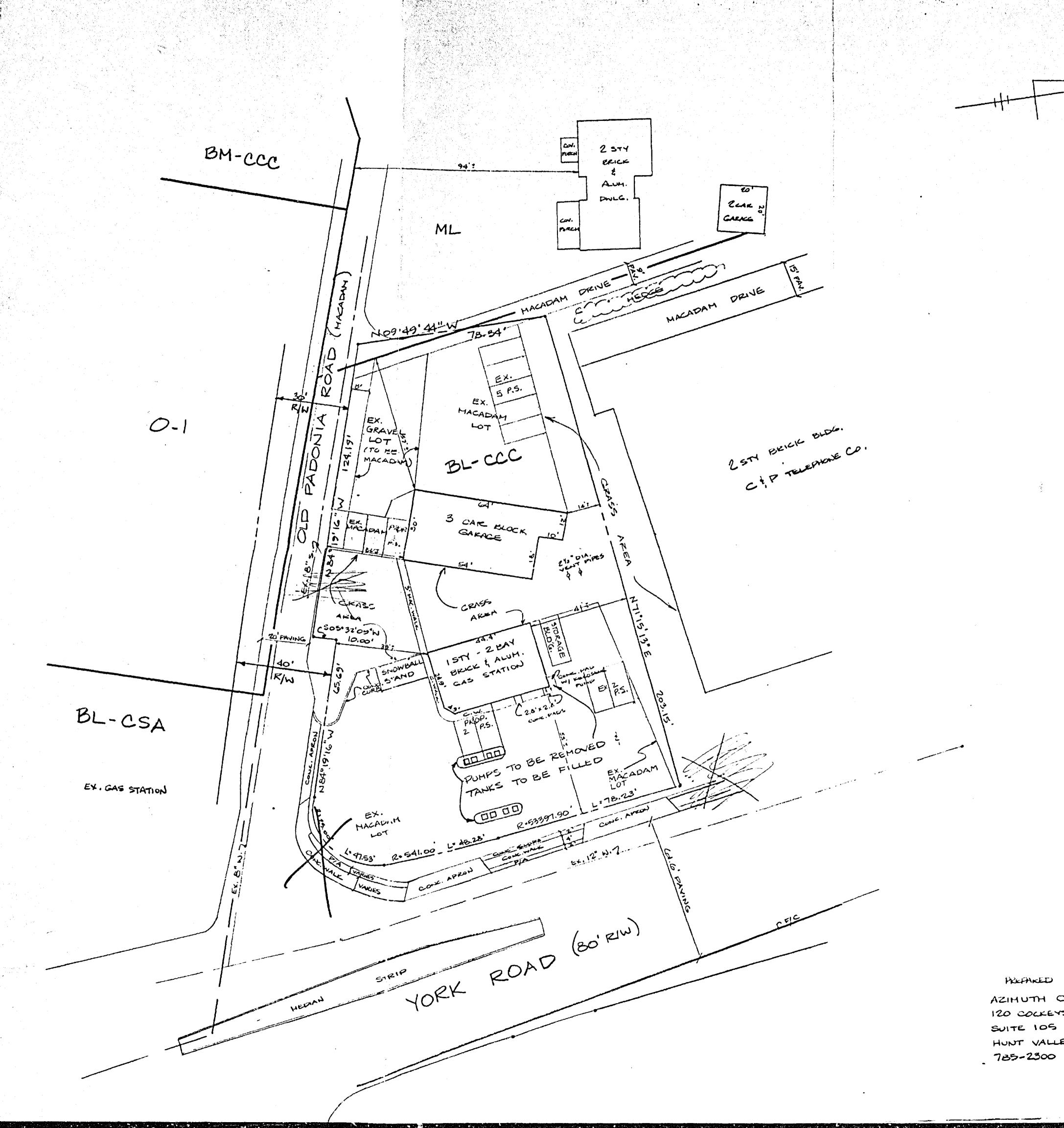
The Bureau of Traffic Engineering has no comments for items number (335, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, and 347.

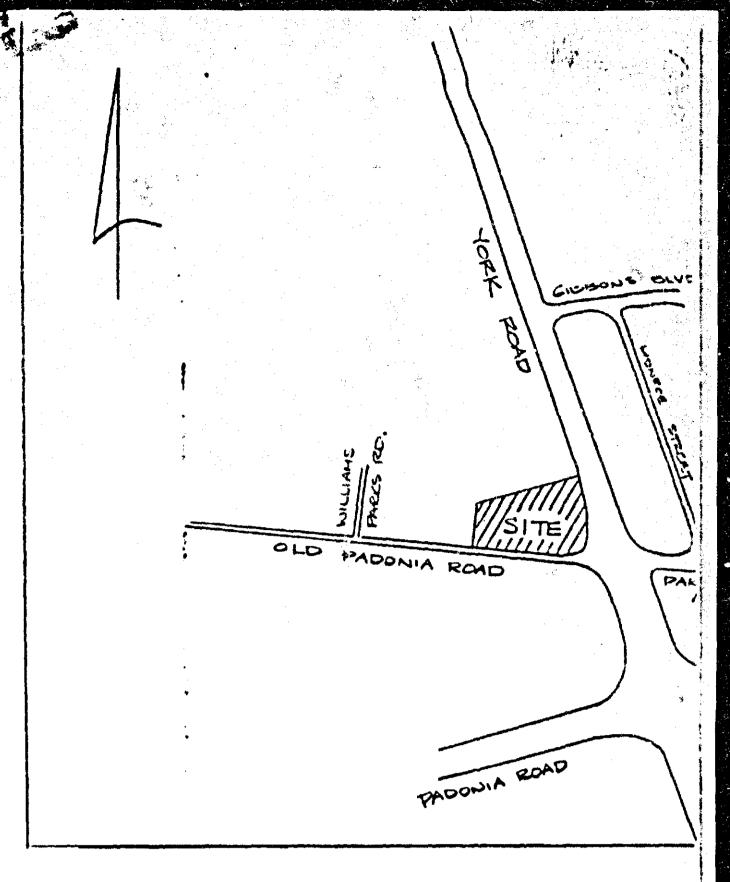
Very truly yours.

Stephen E. Weber, P.E. Assistant Traffic Engineer

SEW/RF/pml-b







VICINITY Scale: 1" = 200'

MONING __ BL - CKE ex. Blildings - 2983 s.f. proposed buildings-SEASONAL SNOWBALL STAND- 200 S.A ex. use - gasoline service station (see sp.ex. case 3804-5) Proposed use - service garage Seasmal showeall signage proposed NO ADDITIONAL SIGNAGE PROPOSED

ONNER

WILLIAM P. & ANGELA G. O'CONNOR DELID REF. E.H.K., JR. 5607 - 773

#336

SPECIAL EXCEPTION PLAT

PADONIA AUTO CENTER 9712 YORK ROAD 8TH ELECTION DISTRICT. EALTIMORE CO., MD.



SCALE : 1" = 20'

PARKING DATA

ALL PARKING SMACES - BYZ'X 18'

PREPARED BY:

SUITE 105

AZIMUTH CONSULTANTS

120 COCKEYSVILLE KD.

HUNT VALLEY, MD. 21031

PARKING REQUIRED - (2983 5.F/300) 10

(200 5F/200) 1 1

TOTAL 11 SPACES

EXISTING FARKING BHOWN + 7 SPACES PROPOSED PARNING SHOWN . 5 SPACES

TOTAL

= 12 SPACES

DATE: JAN. 13, 1988

REVISED: FEB. 23, 1988

- 88-486-X - Circuit Court AFFIRMED C.B. of A.

MELVIN KABIK, et ux	•	IN THE CIRCUIT COURT
Appellant	*	FOR BALTIMORE COUNTY
	•	:
vs.	ŧ	7
	*	CASE NO. 89-CG-1736 C 750
BALTIMORE COUNTY BOARD	*	CASE: NO. 89-CG-1736 C
OF APPEALS	*	2 <u></u>
Appellee	*	5
	*	<u>55 - 7</u>

OPINION and ORDER

A hearing in this Appeal from the Board of Appeals for Baltimore County (hereinafter referred to as "Board") was held and argument of Counsel for all parties presented on September 21, 1989. The Court reviewed the transcript of the proceedings before the Board and the various Exhibits received, the Memoranda submitted by Counsel and the Opinion of the Board dated April 20, 1989.

The Appellants are property owners who filed a Petition for Special Exception seeking to erect a twelve foot by twenty-five foot outdoor advertising sign on the north side of Frederick Road between Prospect Avenue on the west and the intersection of Paradise Avenue on the east. The property upon which the sign is proposed is at the west end of a commercial shopping strip which runs along the north side of Frederick Road and is otherwise surrounded by residential zoning and use on all sides. (T. 15-18) The property on the south side of Frederick Road across from the neighborhood shopping strip is zoned and used residentially. (T. 32-34) The proposed sign would face

The evidence with respect to the relationship between Appellants' proposed sign and the revitalization plan was presented through witnesses who testified before the Board. Those witnesses were subject to cross-examination regarding whether the proposed sign was compatible with or inconsistent with the revitalization plan. Those witnesses were subject to cross-examination as to the opinions which they expressed. The revitalization plan was not the disputed adjudicative fact. The relationship of the proposed sign to the goals and objectives of the Plan was the matter for consideration. On this matter, live testimony was presented and the witnesses were subject to

For the above reasons, the Board committed no error in admitting the Paradise-East Catonsville Enhancement Study over Appeliants' objection.

cross-examination.

As to Appellant's second contention, the findings of the Board are clearly supported by substantial, material and probative evidence in this case. William Huey of the Baltimore County Office of Planning and Moning test ified that the proposed sign was not consistent with the Paradise-East Catonsville Enhancement Study, that this study had already been implemented by streetscaping and enhancement on the south side of Frederick Road and was approaching completion on the north side. (T. 52-53) He further testified that the sign was out of scale and would add clutter to what was an acceptable condition for the area without Appellant's proposed billboard. (T. 54)

toward ea.:t bound traffic on Frederick Road and would be illuminated by mercury lamp directed from the pole into the sign. (T. 28)

The Board of Appeals, in denying Appellant's Special Exception, determined that the proposed sign created an adverse effect upon the unique property surrounding the proposed site which 'was different in kind or degree than that inherently associated with such a use regardless of its location within the commercial zone, and would not only dwarf the subject site by its size and illumination, but would also impact the surrounding residential properties. (Opinion p. 4)

As a result of these findings, notwithstanding compliance with Baltimore County Zoning Regulation 413.3, the Board held that Appellants had failed to show that their proposed use was not detrimental to the health, safety and general welfare of the community, and denied Appellant's Petition. (Opinion p. 4)

Appellants raise two issues on appeal, namely:

- 1) That the Board erred in admitting into evidence the Paradise-East Catonsville Enhancement Study; and
- 2) That the Board's denial of the Special Exception was unsupported by any probative evidence, and, consequently, was arbitrary and capricious.
- Over Appellants' objection (T. 61-63), the Board admitted into evidence the Paradise-East Catonsville Enhancement Study and considered testimony related thereto presented by representatives of Baltimore County's Office of Planning and Zoning and Economic

Property (Contract)

Kimberly Piper of the Baltimore County Economic Development Commission testified that significant revitalization efforts had already been undertaken in the Paradise-East Catonsville Study area, with \$119,000 already spent on the south side and \$424,000 on the north side of Frederick Road. (T. 87)

Ms. Piper further testified on page 88 of the transcript,

"We (Economic Development Commission) are opposed to it. The Office's primary function is to work with designated revitalization areas, to work with the character of the neighborhood, the character they provide, the character that's there, provide assistance to improve the neighborhood, to keep its character, and to keep the health of the area which impacts directly on the health of the resident area surrounding it."

James Bailey, a neighbor in the area, also testified as to his concerns regarding the character of the neighborhood, the consequences to traffic on Frederick Road, if the sign were installed, and increased light on his property from the sign. (T. 73-76) He further testified as to the progress being made with the revitalization effort. (T. 73-75)

Appellants presented as witnesses, Barry Freedman, an employee with Penn Advertising of Baltimore, Inc., and Melvin Kabik, the owner of the property at issue. Both testified that the sign was within the zoning allowed and did not adversely impact on the health, safety and welfare of the general area. The Board, however, was not required to accept their testimony. There was certainly evidence offered to the contrary.

Development Commission. Appellants' contention with respect to the inadmissibility of the revitalization plan hinges on the "hearsay nature" of the Plan and the inability of Appellants to cross-examine the Study's author.

and 10 公司 公司 (10 miles)

Appellants admit that the rules of evidence are not applied as strictly in administrative proceedings as in judicial trials. Appellants contend, however, that when the Board holds a hearing and decides disputed adjudicative facts based upon evidence and a record, a reasonable right of cross-examination must be allowed the parties.

In support of their contention, Appellant's cite Tron vs. Prince George's County, 69 Md. App. 256. In <u>Tron</u>, the Administrative Board admitted into evidence the reports of three doctors who had examined the Appellant, but whose examinations were confined

"...to Appellant's physical condition and did not address the issue of whether Appellant's disability was service related or not. The booklet, however, did contain an Opinion from the Medical Advisory Board's Chairman, Dr. Weintraub. Despite never having seen, examined or treated Appellant, Dr. Weintraub concluded, based on the reports of Drs. Mendelsohn, Absendschein and Lourie, that Appellant's disability was not service-connected. This booklet was introduced into evidence over the objection of Appellant's Counsel who argued, inter alia, that there existed no opportunity to cross-examine any of the doctors whose views were not illicited in live testimony." (pp. 260-261)

Thus, the testimony presented in Tron, supra, all of which was presented in the booklet and by way of medical reports, was the

only testimony presented against Appellant and was the very basis of the decision of the Administrative Board which denied Appellant relief. (pp. 260-261)

It was in the above context where that Court of Special Appeals quoted from Dembeck vs. Ship Building Corporation, 166 Md. 21 (1933), at p. 26:

"Under such circumstances, there would seem to be a clear denial to the Claimant of a right, recognized and enforced in all courts wherein truth and justice is the objective, for the parties to the cause to be confronted with the witnesses against them, and an opportunity to test the correctness or truthfulness of the evidence by cross-examination"

Such is not the situation in the instant case. The Paradise-East Catonsville Enhancement Study concerned a revitalization plan for a specifically defined area, which included the site of Appellants' proposed sign. The Study did not specifically address the issue in this case, but included this general area of Frederick Road as the subject of an official area Master Plan approved by the Baltimore County Planning Board in 1982 and by resolution of the Baltimore County Council thereafter. (T. 50-51)

The revitalization plan included certain goals and objectives for this general area of Frederick Road, as well as strategies and proposals to meet these goals and objectives. With adoption of the revitalization study by the Baltimore County Council, the Plan became part of the Comprehensive Zoning for Baltimore County. See, Baltimore County Charter, Section 523.

The Court of Special Appeals noted in Anderson v. Sawyer, 23 Md. App. 612 at page 617,

"If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to

As already noted, the Paradise-East Catonsville Enhancement Study was adopted by the Baltimore County Council as an Amendment to the Comprehensive Plan. Thus, although Appellants' property on which the proposed sign was intended to be erected is properly zoned for the application of a special exception, Appellants' property is within an area which is subject to and benefits from the legislatively adopted enhancement plan.

The Board had testimony regarding the adverse impact of the proposed sign on the revitalization efforts for the general area to which Baltimore County had already committed approximately \$500,000 Mr. Bailey testified to the adverse impacts anticipated by him on his property, as well as on the area within the vicinity of the proposed sign site. The Board was obviously persuaded by this evidence that the Appellants had failed to meet their burden and, as a result, were not entitled to the grant of a Special Exception. There was substantial, material and competent evidence to support the Board's decision, and, consequently, the Board's decision was not arbitrary or Capridious.

MICROPHUEN

For the aforegoing reasons, this Court AFFIRMS the County Board of Appeals for Baltimore County, with the costs of this Appeal to be paid Appellant.

JAMES T. SMITH, JR.

JTS/ss

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